

STATE OF VERMONT
HUMAN SERVICES BOARD

In re)	Fair Hearing No. 15,641
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Appeal of)	
)	

INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare (DSW) assessing an overpayment in both the ANFC and Food Stamp programs based on her failure to report her earnings. The issues are whether the petitioner's income is excludible work/study payments, and, if not, whether she is eligible for work-related deductions in the computation of the overpayment.

FINDINGS OF FACT

1. The petitioner is an ANFC recipient and was a full-time college student who graduated in May of 1998. As part of her degree requirement, she took part in an internship program with a tax accounting firm from January 5, 1998 through April 16, 1998. Although internship programs generally are not paid, her employer decided to pay her \$6.00 per hour. She worked an average of fifteen hours per week and was paid weekly.

2. The petitioner did not report her income from the internship to DSW. On February 28, 1998, after her internship had begun, the petitioner filled out a "Statement of Need" form which specifically asked if she had income from a job to which she answered "No". In fact, the

petitioner never reported the income to DSW. The income was discovered through a Department of Employment and Training tape match used by DSW. A verification form containing the number of hours worked and gross wages made by the petitioner was obtained by DSW. On that form the owner of the company remarked:

[petitioner] was an intern from Johnson State College. To make the internship real life I wanted to pay her an hourly wage and treat her like an employee.

3. The petitioner says she did not report the money she received from the internship because she thought it was similar to a work/study grant which would be excluded. On that February 1998, "Statement of Need" form she was also asked if she had any income from a student grant or loan to which she answered "No". She says that she answered that way because she believed that her school would fill out a form detailing her school aid situation which DSW usually supplied to her, but which it did not during this semester.

4. On July 30, 1998, DSW sent the petitioner a notice that she had been determined to have been overpaid \$643 in ANFC and \$237 in Food Stamps (later corrected to \$233) for the months of March and April 1998¹ because "the Department did not receive correct, complete or timely information"

¹ Although the petitioner started receiving income in January, she was required to report it within the month following its receipt. With advance notice requirements, the earliest that the petitioner could have had her income counted against her was for benefits due on March 1, 1998. Therefore, DSW only calculated the overpayment for the months of March and April.

from the petitioner. When the petitioner talked with her worker about how her benefits were calculated for March and April, she discovered that her gross income was counted without any work related deductions against the amount of ANFC which should have been paid. The Food Stamp program does not use work-related deductions for earned income so her calculations were the same in the program as if she had timely reported the income.

5. The petitioner agrees that the Department has the correct information on the amount of unreported income she made for March and April. She still believes that her income was really work/study income which should have been reported by the school and excluded. She was given additional time after the hearing to provide verification from the school that the money was not just regular income. She did not provide such information and it must therefore be found that the income was regular unearned income paid by a private employer to an employee.

6. In the alternative, the petitioner argues that in the overpayment calculation she should have received the work deductions from ANFC she would have received if this income had been timely reported. She says at worst the failure to report was a misjudgment on her part about the nature of her income and she should be excused. She also offered by way of explanation that she was under several stressors during those months of her internship, including

losing her housing due to a break-up with her boyfriend, moving, obtaining a new boyfriend, preparing tax returns for her ex- and new boyfriends, quarrels with her friends and family, buying a new car, lack of money for presents for her thirteen year old daughter's birthday, dealing with an unplanned pregnancy, suicide threats by her daughter who wanted to go live with her father, a car accident, births of children of friends and family, final examinations, graduation from college and her roommate's surgery for cancer. She presented no evidence that her "stressors" resulted in or were caused by a severe illness.

ORDER

The decision of the Department is affirmed.

REASONS

The ANFC regulations require the inclusion of earned income when calculating eligibility including "all wages, . . . from activities in which the individual is engaged as an employee." W.A.M. § 2253. The regulations exclude income from a work/study program if it is "administered by a college or university recognized by educational authorities in which the undergraduate student is enrolled half time or more than half time . . . W.A.M. § 2255.1.

The Food Stamp program requires consideration of "all income from whatever source excluding only items specified"

in the subsequent sections and specifically includes as "earned income" "all wages and salaries of an employee."

F.S.M. § 273.9(b). Work study money "awarded to a household member" is excluded under the Food Stamp regulations to the extent that it is "identified (earmarked) by the institution, school, program, or other grantor" for certain allowable expenses related to attendance at school. See. F.S.M. § 273.9(c)(3).

The evidence in this case does not support a finding that the petitioner received her income through any "work/study program". The language in the regulations above makes it clear that a work/study program is one in which the college attended by the student would make an award to her for the payment of some of her expenses in return for her engaging in work activities. The evidence here indicates that the petitioner was voluntarily paid by a private employer with private funds during her internship and that the compensation was not administered by or arranged by her school. The petitioner was given an opportunity to show that this income was from a Johnson State College work/study program but she was unable to provide such verification.

It must be concluded, therefore, that the income received by the petitioner during these months was regular countable wages from employment.² As such, the Department

² The fact that the petitioner also received college credit for that work does not change the nature of the

was correct to count that income for both the ANFC and Food Stamp programs.

The remaining issue is whether or not the petitioner was eligible for the earned income work disregards in the ANFC program when the correct amount of her ANFC grant for March and April of 1998 was recalculated. W.A.M. 9 2254.1 includes the following provision:

. . . the disallowance of earned income disregards will be imposed on any new or increased earned income which the recipient fails without good cause to report by the end of the calendar month following the month in which the new or increased income was first received. Disregards are allowed for the income which is reported timely. Circumstances which could be considered as good cause for failure to report timely are limited to the following:

1. Natural disasters, such as fires or floods;
2. Illness of such severity that the recipient is unable to direct his or her personal affairs.
3. Refusal of an employer to provide earned income verification, or the unavailability of an employer to provide verification before the deadline;
4. Lost or stolen mail which is confirmed by the Postal Service;
5. Total gross earnings of the individual, less any allowable business expenses (self-employment only), do not exceed the amount of the standard employment expense deduction.

The above deadline for exemption from this disallowance has no effect on an assistance group's responsibility to report all changes in circumstances within 10 days of their being known to the group. When a recipient reports new or increased earned income after the 10-day

income.

period but no later than the end of the calendar month following the month in which the new or increased earned income was first received, any resulting overpayment must be recouped, but no disallowance will be imposed.

The above regulation imposes a "penalty" on late reporting households that consists of the loss of any earned income disregards for the months in which the income is not reported within a month following the month in which it was first received. Moreover, the "excuses" for such late reporting, whereby the penalty can be avoided, are expressly limited to those set forth in the regulation. See Fair Hearing No. 14,180. The petitioner's principal alleged reason for nonreporting--i.e., her confusion as to her responsibility to report based on her misunderstanding of work/study income--is not included as "good cause" in the regulation. Neither is her secondary reason for failure to report--family stressors--sufficiently severe to meet the good cause exception of severe illness which prevents an ability to manage one's affairs. While the petitioner may have been dealing with a daunting array of life's problems last spring, the fact that she still managed through all of this adversity to attend college full-time, work at an accounting firm for fifteen hours per week, finish her degree and graduate undercuts any argument she might make that she was unable to direct her personal affairs. While the facts here certainly offer an explanation for her failure, it cannot be said that they meet the definition of

good cause in the regulation. Regardless of whether the petitioner could be found to be at fault³, it appears clear that she cannot be considered "eligible" for the earned income disregards in either November or December, 1995.

Absent the application of these disregards, the Department's calculation of an ANFC overpayment of \$643 and a Food Stamp overpayment of \$233 to the petitioner for those months appears correct. The petitioner does not challenge the obligation of the Department to establish and recover overpaid amounts in these two programs.⁴ Inasmuch as the

³ The Department has determined in this matter that it will not pursue the petitioner for fraud in relation to this matter.

⁴ Welfare Assistance Manual (WAM) § 2234.2 includes the following provision:

Overpayments of assistance, whether resulting from administrative error, client error or payments made pending a fair hearing which is subsequently determined in favor of the Department, shall be subject to recoupment. Recovery of an overpayment can be made through repayment by the recipient of the overpayment, or by reducing the amount of payment being received by the ANFC group of which he is a member.

An overpayment is defined in the federal regulations as: "a financial assistance payment received by or for an assistance unit for the payment month which exceeds the amount for which that unit was eligible." 45 C.F.R. § 233.20(a)(13). Both the state and federal regulations provide for the recoupment of overpayments regardless of whether it was the fault of the recipient household or the state agency.

The Food Stamp regulations contain similar provisions requiring the establishment of claims for all overpaid amounts whether they are "inadvertent household error or "administrative error." See F.S.M. 273.18 et seq.

Department's decision is in accord with the applicable regulations, the Board is bound by law to affirm it. 3

V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

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